



FEB 3 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD

DIRECTOR

DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

RODNEY P. LANTIER, DIRECTOR  
REGULATORY AND FEDERAL ASSISTANCE  
PUBLICATIONS DIVISION

SUBJECT:

FAR Case 2002-023, Excluded Parties System Enhancement

Attached are comments received on the subject FAR case published at 68 FR 67354; December 1, 2003. The comment closing date was January 30, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2002-023-1	12/01/03	12/01/03	Roger J. Hund
2002-023-2	12/04/03	12/04/03	Denise Mitchell
2002-023-3	12/31/03	12/31/03	Craig S. McCaa
2003-023-4	01/05/04	01/05/04	POGO
2002-023-5	01/29/04	01/29/04	Suzanne Hersh
2002-023-6	01/29/04	01/29/04	Barbara Scales

Attachments

2002-023-1



"Hund, Roger"  
<hundr@scott.disa.mil  
>

To: "farcase.2002-023@gsa.gov" <farcase.2002-023@gsa.gov>  
cc:  
Subject: Excluded Parties

12/01/2003 04:17 PM

Recommend excluded parties names be linked with Central Contractor Registration Website, which is used to make payments to Contractors and which is required to award contracts or send orders. Payments and new contracts to excluded parties would be flagged. No need to go to just another website for information.

Roger J. Hund  
DITCO Contracting Officer  
DITCO/AQSS4/Hund  
2300 East Drive  
Scott AFB, IL 62225-5406  
Hours: 6AM - 3:00PM (CST)  
Tel. 618-229-9127  
Fax. 618-229-9592  
EMail: hundr@scott.disa.mil

2002-023-2



**"Denise Mitchell"**  
**<denisem@advancedsolutionsgroup.biz>**

12/04/2003 12:15 PM  
Please respond to  
"Denise Mitchell"

To: farcase.2002-023@gsa.gov  
cc:  
Subject: Debarment & Suspension Penalties

As a Contractor I absolutley agree with these lists banning vendors that have proven bad performance. I have seen many Contractors fail to perform on projects, and are awarded more projects through other agencies and the problems continue. It is time to stop rewarding bad performance.

Thanks!

Denise Mitchell  
Advanced Solutions Group - President

2003-023-3



"McCaa Craig S Civ  
AFRL/IFOJ"  
<Craig.McCaa@rl.af.mi  
l>

To: "farcase.2002-023@gsa.gov" <farcase.2002-023@gsa.gov>  
cc: "support@epls.gov" <support@epls.gov>  
Subject: FAR case 2002-023

12/31/2003 11:55 AM

Although, with the exception of 9.404(b)(7), the information listed in 9.404 isn't new, republication in a way that directly ties to the on-line system raises an old issue. Among the information included in an EPLS listing is the DUNS No. (ref. 9.404(b)(6)). The DUNS No. is not a required entry for the system - even for entities possessing a DUNS No. A search conducted against the DUNS No. (which is one of the search modes in the on-line system) will return a false negative if the searched party is listed, but the listing's DUNS No. field is blank. Note that this isn't different from the false negative returned when you enter the searched party's name not exactly as it's found in the listing - including punctuation and spaces. Most searchers assume that a system response of "No records were found matching this criteria" means that the party isn't listed, not that information was missing from a field. While most of us who use the system on a routine basis are aware of the search engine's limitations (it being a slow and dumb character search with very limited "wildcarding"), the DUNS issue is more misleading, since the DUNS No. is offered up as a separate search mode, leading the searcher to believe that the DUNS No. is a required field in the listing for entities possessing a DUNS No.

I suggest that you add a cautionary note to 9.404 or 9.105-1(c)(1) advising searchers of the search engine limitations.

**Craig S. McCaa**  
**Attorney - Advisor**

AFRL/IFOJ  
26 Electronic Pky  
Rome NY 13441-4514

Voice: (315) 330-2087  
Fax: (315) 330-7583  
Email: craig.mccaa@rl.af.mil

2002-023-4

# POGO

Project On Government Oversight  
Watchdog since 1981

January 5, 2004

General Services Administration  
FAR Secretariat (MVA)  
1800 F Street, N.W.  
Room 4035  
ATTN: Ms. Laurie Duarte  
Washington, D.C. 20405

**RE: FAR Case 2002-023**

Dear Ms. Duarte:

According to the U.S. General Services Administration, last year the federal government spent approximately "\$265 billion on goods and services in order to meet agency requirements to provide government programs and services to the American public." Federal regulations require the government to do business with "responsible contractors." "To be determined responsible, a prospective contractor must ... [h]ave a satisfactory record of integrity and business ethics." In reality, however, the government continues to conduct business with companies that repeatedly violate federal and state laws and regulations. In order to protect the government's and taxpayers' interests, the government has the authority to suspend or debar non-responsible contractors from receiving future government contracts.

Because suspension and debarment of a major contractor can have a devastating consequence on the government's ability to buy goods and services, the system has not been adequately applied or uniformly enforced against large and small government contractors. POGO recommends the following changes to improve the suspension and debarment system: (1) create a centralized information database that should be consulted before awarding a contract or making a suspension or debarment decision; (2) require a contractor to disclose current suspensions or debarments, litigation initiated against them in the past three years on either the federal or state level, and any Administrative Agreements it is currently implementing; (3) require a agency debarment official to use suspension and debarment actions equally against large and small contractors or to justify in writing a determination to do business with a non-responsible contractor; (4) amend FAR to require mandatory suspension or debarment for a contractor that either had been criminally convicted or had a civil judgment rendered against them more than once in a three-year period; and (5) empower the Interagency Committee on Debarment and Suspension (ICDS) to coordinate with the federal agency

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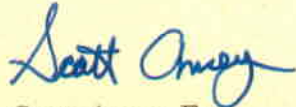
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2007-0234

taking the leadership role in a suspension or debarment case (especially in the case of a repeat offender) and require ICDS to submit semiannual reports to Congress regarding suspension and debarment decisions.

Sincerely,

A handwritten signature in blue ink that reads "Scott Amey". The signature is written in a cursive style with a large, stylized "S" and "A".

Scott Amey, Esq.  
Senior Investigator



2002-023-5

> >Robert Meunier.  
> >  
> >The following is a list of comments regarding the Federal Register  
> >proposed rule change on "Federal Acquisition Regulation; Excluded  
> >Parties System Enhancement; Proposed Rule." FAR Case 2002-023  
> >  
> >1. The concept between "ineligible" and "disqualified" seems to  
> >overlap.  
> >It appears that the word disqualified is being used to represent any  
> >mandatory debarments (i.e. determined by statute, Executive Order, etc.)  
> >where the prohibition is on specified Federal procurement or  
> >nonprocurement transactions. However, under the FAR "ineligible"  
> >represents mandatory debarments where the prohibition is for Federal  
> >contracts only. Our recommendation would be to use "disqualified" to  
> >represent the mandatory debarments and to use "ineligible" to represent  
> >both discretionary and mandatory exclusions. This would not only make a  
> >clear separation between the concepts, but would also align the FAR and  
> >the Nonprocurement Governmentwide Suspension and Debarment common rule  
> >together in its usage of terminology. Below is areas within this  
> >Federal  
> >Register publication where this concept can be found:  
> >  
> > -2.101 Definitions (b): Disqualified should only be used.  
> > -9.404 (b) (1): Disqualified should be used instead of "declared  
> >ineligible."  
> > -9.404 (c) (6): Disqualified should be included since agencies  
> >will  
> >be responsible for listing these  
> > actions also.  
> >  
> >In addition, the remaining applicable portions of the FAR should be  
> >examined for similar applications.  
> >  
> >2. The term "covered transactions" is used, but there is no definition  
> >listed. When creating a definition for covered transactions, please  
> >consult Subpart B of the Nonprocurement Governmentwide Suspension and  
> >Debarment common rule published November 26, 2003 (68 FR 66533).  
> >  
> >3. The citations for the Clean Air Act and Clean Water Act are  
> >incorrect. The Clean Air Act is 42 U.S.C. §7606. The Clean Water Act  
> >citation is 33 U.S.C. §1368.  
> >  
> >4. Under section 9.404 (c) (5), the word "generally" should be added as  
> >follows, "Update EPLS, generally, within 5 working days..." This allows  
> >for occasions where 5 working days may not be enough time. Although  
> >this  
> >should happen very infrequently, it would give some latitude in cases  
> >where that specific time frame cannot be met.  
> >  
> >Should you have any questions, please feel free to contact me at  
> >202-564-5374. Thank you.  
> >  
> >Suzanne Hersh  
> >Compliance Specialist  
> >202-564-5374  
> >202-565-2471 (fax)

20 02-023-6



"Scales, Barbara W Ms  
USASMDC"  
<Barbara.Scales@us.a  
rmy.mil>

01/29/2004 10:17 AM

To: "theodore.harrison@us.army.mil" <theodore.harrison@us.army.mil>,  
"farcase.2002-023@gsa.gov" <farcase.2002-023@gsa.gov>  
cc: "Ratliff, Elizabeth Ms USASMDC" <nevrik.e.ratliff@us.army.mil>,  
"Robinson, Undra LTC USASMDC" <Undra.Robinson@us.army.mil>,  
"Lumer, Mark J Mr USASMDC" <mark.lumer@us.army.mil>, "Boon,  
Garfield W Jr Mr USASMDC" <Garfield.Boon@us.army.mil>, "Gorman,  
Mary L Ms SMD-C" <Mary.Gorman@ARSPACE.ARMY.MIL>,  
"Smith, Judith A Ms USASMDC" <Judith.Smith@us.army.mil>  
Subject: RE: Excluded Parties List System (EPLS)

Reference e-mail below, 10 Jan 04, subject as above.

Concurrence is provided.

-----Original Message-----

From: Harrison, Ted C COL ACA  
To: Conley, Joe E. COL DCC-W; Frye, Jan COL PARC, MTMC; Greenhouse, Bunnatine  
Ms., USACE; Harris, Marilyn DSCA/ADMIN; Harvey, Lee H PEO EIS; Kennedy, Tom  
NGB; Lumer, Mark J Mr USASMDC; Parsons, Jeffrey SES AMCCP; Sandra Sieber  
(E-mail); Stephens, Ned LTC, PARC, MEDCOM  
Sent: 1/10/04 1:50 PM  
Subject: Excluded Parties List System (EPLS)

Army PARCS,

Please note the just published proposed rule regarding the Excluded  
Parties  
List System (EPLS) that's used to identify debarred/suspended vendors.  
The  
link is below. EPLS is one of the projects under the Integrated  
Acquisition  
Environment (IAE) portfolio. This proposed rule proposes to stop the  
publication of the hard copy list and drive everyone to the on-line  
system.  
Please have your staff take a look and provide any comments to the  
contact point noted in  
the Federal Register.

Also note: In order to reduce your amount of routine e-mail, if you have  
a Command Contracting point of contact that you would like to be the  
recipient of Procurement e-Business related information and updates of a  
routine nature please provide me a POC and I will create a distribution  
list for this material.

Very respectfully,

COL Ted Harrison  
Director, Business Systems  
U.S. Army Contracting Agency  
"We mean eBusiness"  
703 681-7569

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<[http://ice.disa.mil/index.cfm?fa=site&site\\_id=252](http://ice.disa.mil/index.cfm?fa=site&site_id=252)> &site\_id=252>

FAR Proposed Rule 2002-023, Excluded Parties System Enhancement, is  
available for download at - -

<http://www.acqnet.gov/far/ProposedRules/proposed.htm>  
<<http://www.acqnet.gov/far/ProposedRules/proposed.htm>>

Comments are due on January 30, 2003. Any agency comments must be



2002-023-6

submitted through your agency representative.

Comments Now Available Electronically for Review

FAR comments received on various proposed rules are now available for review at our website at - -

<http://www.arnet.gov/far> <<http://www.arnet.gov/far>>